

IN THE

Court of Appeal of the State of California

IN AND FOR THE

Fifth Appellate District

COURTROOM PROCEEDINGS

The court met in its courtroom at 10:00 A.M. Present: Honorable Steven M. Vartabedian, Acting Presiding Justice; Honorable Rebecca A. Wiseman, Associate Justice; Honorable Herbert I. Levy, Associate Justice; and Leisa V. Biggers, Clerk/Administrator, by Lisa J. Prosser, Senior Deputy Clerk.

F051734 Radiological Physics, Inc. v. Hanford Community Hospital et al.

Cause called and argued by Ronald Talmo, Esq., counsel for appellant and by Susan S. Azad, Esq., counsel for respondent.

Cause ordered submitted.

F050181 Hostetler v. Labar Enterprises, Inc.

Cause called and argued by Bruce B. Sousa, Esq., counsel for appellant and by Stephen Carroll, Esq., counsel for respondent.

Cause ordered submitted.

F051445 Hostetler v. Labar Enterprises, Inc.

Cause called and argued by Bruce B. Sousa, Esq., counsel for appellant and by Stephen Carroll, Esq., counsel for respondent.

Cause ordered submitted.

Court recessed until Thursday, December 13, 2007 at 1:30 P.M.

The court reconvened in its courtroom at 1:30 P.M. Present: Honorable Steven M. Vartabedian, Acting Presiding Justice; Honorable Rebecca A. Wiseman, Associate Justice; Honorable Herbert I. Levy, Associate Justice; and Leisa V. Biggers, Clerk/Administrator, by Anthony Lauria, Senior Deputy Clerk.

F048011 Smith III v. State Of California, Superior Court, Kings County
F049376

Cause called and argued by Robert P. Smith, appellant in propria persona and by Mark A. Brown, Deputy Attorney General, counsel for respondent State of California and by Kyle Sand, Deputy County Counsel, counsel for respondent Superior Court, Kings County.

Cause ordered submitted.

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F049541 Bradley v. California Dept. Of Corrections

Cause called and argued by Benjamin L. Hecht, Esq., counsel for plaintiff and appellant and by Susan E. Slager, Deputy Attorney General, counsel for defendant and appellant.

Cause ordered submitted.

Court recessed until Friday, December 14, 2007 at 10:00 A.M.

F051572 Flores et al. v. Kharazi et al.

The judgment is affirmed. Defendants shall recover their costs on appeal. Wiseman, J.

We concur: Harris, Acting P.J.; Gomes, J.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

F049722 People v. Zapien

The judgment is affirmed. Hill, J.

We concur: Levy, Acting P.J.; Kane, J.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

F050521 Juan M. Montemayor v. Board of Trustees of The Madera Unified School District et al.

Filed order denying request for publication of the opinion.

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F044886 Loveless et al. v. Melton et al.

The trial court erred in its interpretation of the parties' written agreements when it concluded the \$400,000 was to be treated as "capital," and further erred in its cessation of prejudgment interest on the \$335,983.27 prior to entry of judgment. The judgment is reversed and the case is remanded with directions that the trial court undertake a revised accounting and enter a new judgment consistent herewith. Appellants are entitled to costs on appeal. Kane, J.

We concur: Levy, Acting P.J.; Hill, J.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

F046375 Loveless et al. v. The Superior Court of Stanislaus County; Melton et al.

The petition for writ of error *coram vobis* is granted. Accordingly, the judgment in the Dissolution Action is reopened and the matter is remanded to the trial court for reconsideration of its accounting in light of the proffered new evidence of the concealed partnership asset (i.e., the Railroad Parcel). Evidence regarding the Railroad Parcel and its value may be presented to the trial court, together with any relevant evidence concerning the alleged concealment of the asset by Melton. These matters may be fully considered by the trial court in rendering a new accounting between the partners based upon all the facts and equities of the case, and for the purpose of reconsidering the punitive damage claim. We emphasize that although we have granted relief based on a prima facie showing of extrinsic fraud, on remand we do not bind the trial court's discretion or require any particular outcome of finding of fact. Kane, J.

We concur: Levy, Acting P.J.; Hill, J.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

F051090 Izabelah Serrano, a Minor, etc. v. Housing Authority Of County Of Tulare, et al.

Oral argument having been waived in the above-entitled case in accordance with the provisions of a notice mailed to counsel, the case is submitted for decision.

IN THE

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IN AND FOR THE

Fifth Appellate District

F048550 Westside Development et al. v. M & O Enterprises, Inc.

The appeal from judgment of the Tuolumne County Superior Court (Super. Ct. No. 50626) is hereby dismissed as moot based on our opinion in case Number F046375, in which we granted petitioners' Writ of Error *Coram Vobis*.

F050849 Rampage Vineyard, LLC
F051789

Appellant's petition for rehearing filed herein is denied.

F051856 People v. Bonilla

We direct the trial court to correct the abstract of judgment to reflect that no restitution fines were imposed in Case F05100750-9 and to forward the corrected abstract of judgment to the appropriate authorities. In all other respects, the judgment is affirmed.
Vartabedian, Acting P.J.

We concur: Harris, J.; Wiseman, J.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

F050439 Servin et al. v. I-5 Social Services Corporation Inc., et al.; Golden Castle
F051046 Development, LLC

The judgment signed and filed on March 13, 2006, and the post-judgment order awarding attorney fees to respondents are affirmed. Respondents are affirmed. Respondents shall recover their costs on appeal. Dawson, J.

We concur: Vartabedian, Acting P.J.; Cornell, J.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

F050888 Reyes et al. v. Rodriguez

The judgment is affirmed. Costs to respondent. Ardaiz, P.J.

We concur: Harris, J.; Gomes, J.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]